REMARKS

The Examiner is thanked for the thorough examination of the present application. Applicants respectfully submit that the Examiner's decision that the Declaration under 37 CFR §1.131 submitted November 30, 2007 (the "Rule 131 Declaration") was insufficient to establish conception of the claimed invention prior to the effective date of Kuboyama et al. (i.e., January 26, 2004) is in error for the reasons detailed below, and reconsideration thereof is kindly requested. To further prosecution, submitted herewith is a Supplemental Rule 131 Declaration providing still further evidence of conception of the invention.

I. The Rule 131 Declaration

The Rule 131 Declaration establishes that all of the details of the invention required to prepare the present application had been communicated to the undersigned attorney prior to the effective date of Kuboyama et al, and that the undersigned attorney was in fact preparing the present application prior to the effective date. See page 2, paragraphs 2(a) and 2(b) of the Rule 131 Declaration.

Moreover, the Rule 131 Declaration further establishes that the first draft of the present application, which was submitted to the inventors for review a mere seven days after the effective date, was found to be technically accurate and complete by the inventors, and that it was submitted to the

USPTO in its original form (i.e., without change). See pages 2-3, paragraphs 2(c)-2(e) and 2(h) of the Rule 131 Declaration.

II. Conception of the Invention Is Established

The Examiner rejected independent Claims 1, 9, 16, and 20 under 35 U.S.C. §103(a) based upon U.S. Patent No. 6,181,956 to Koshan, in view of U.S. Pat. Pub. No. 2004/0186728 to Kuboyama et al. As noted above, Applicants submitted a Response and the accompanying Rule 131 Declaration on November 30, 2007 to establish that the present invention precedes the effective date of Kuboyama et al., which therefore renders it unavailable as a prior art reference. In the Final Office Action, the Examiner contends on page 7 thereof that the evidence set forth in the Rule 131 Declaration is insufficient to establish a conception of the invention prior to the effective date of Kuboyama et al.

It is respectfully submitted that the Examiner's decision is in opposition to USPTO and case law authority, and that the Rule 131 Declaration establishes conception of the invention prior to the effective date of Kuboyama et al. coupled with diligence extending from prior to the effective date to the time of filing of the present application. More particularly, MPEP 715.07 Section III (8th Edition, Rev. 6, Sept. 2007, page 700-284) states that "[c]onception is the mental part of the inventive act, but is must be capable of proof, as by drawings, complete disclosure to another person, etc." (Emphasis added).

Thus, the MPEP makes clear that disclosure of an invention by an inventor to another person may absolutely be used to establish conception of the invention.

Moreover, the Board and the courts have unequivocally established that communication of an invention by an inventor to his/her patent attorney of the invention may establish conception of the invention. For example, in Gianladis v. Kass, 324 F.2d 322 (CCPA 1963), the Appellant appealed a decision by the Board of Patent Interferences in an interference proceeding finding that a disclosure of the invention to the inventor's patent attorney corroborated conception. More particularly, the Board had found that a disclosure the inventor made to enable his patent attorney to perform a search to determine whether or not a patent application should be filed established conception of the invention. The United States Court of Customs and Patent Appeals (CCPA) affirmed the Board, and in doing so reiterated the longstanding rule that "'[a] priority of conception is established when the invention is made sufficiently plain to enable those skilled in the art to understand it,'" (citing Townsend v. Smith, 17 CCPA 647, 651; 36 F.2d 292, ___ (CCPA 1929)).

In the present case, the inventors have attested that the invention was completely disclosed to the undersigned patent attorney prior to the effective date. In fact, this disclosure was so thorough and complete that not a single change to the initial application draft was required by the inventors, and it

was submitted to the USPTO without change. This was most certainly a "sufficiently plain" disclosure to enable those skilled in the art to understand the invention, as it is the very same enabling disclosure set forth in the present application.

Moreover, the present case is an even stronger example of conception than Gianladis, since in that case conception was established merely by the disclosure of information to a patent attorney used to perform a patentability search. Here, all of the information necessary to prepare the entire application itself (and not just the information needed to perform an initial patentability screening search) was disclosed to the undersigned patent attorney prior to the effective date. Yet, in Gianladis the mere preliminary disclosure of the invention for use in a patentability screening search was found by the Board and CCPA to be more than adequate evidence to establish conception.

Nonetheless, to further prosecution, submitted herewith is a Supplemental Rule 131 Declaration from inventor Darrell May including as an attachment an email communication from inventor Darrell May to the undersigned attorney providing still further evidence of the conception of the claimed invention prior to the January 24, 2004 effective date of Kuboyama et al.

Accordingly, in view of the Rule 131 Declarations, conception of the invention recited in the claims of the present

application has been established prior to the effective date of Kuboyama et al., as well as due diligence extending from prior to the effective date to the filing of the present application, in accordance with 37 CFR. §1.131(b). It is therefore respectfully submitted that Kuboyama et al. may not be relied upon as prior art, and the rejection of the above-noted independent claims under 35 U.S.C. §103(a) should therefore be withdrawn.

Since the remaining prior art of record fails to properly provide all of the recitations of independent Claims 1, 9, 16, and 20, these claims are patentable. Their respective dependent claims, which recite still further distinguishing features, are also patentable over the prior art and require no further discussion herein.

CONCLUSIONS

In view of the foregoing, it is submitted that all of the claims are patentable. Accordingly, a Notice of Allowance is respectfully requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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